IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

TUESDAY, THE 18TH SEPTEMBER 2007 / 27TH BHADRA 1929

Crl.L.P..No. 655 of 2007()

ST.1200/2004 of J.M.F.C., PATTAMBI
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PETITIONER/COMPALAINANT:

MOIDU S/O. SULAIMAN,CHERATHUVALAPPIL,
VEEDU, PERUMANNUR DESOM,CHALISSERY AMSOM,
OTTAPALAM TALUK.

BY ADV. SRI.E.R.VENKATESWARAN
SRI.R.SREEHARI

RESPONDENTS: ACCUSED & STATE
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1. RAMACHANDRAN S/O. GOVINDAN,
ERIYADATH VEEDU, POST PERINGODU,
THEKKEDATHU VEEDU, KOTHACHIRA AMSOM,
PERINGODU DESOM,OTTAPALAM TALUK.

2. STATE OF KERALA,REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

R2-BY P.P.SRI.PUZHAKKARA MOHAMMED

THIS CRIMINAL LEAVE PETITION HAVING BEEN FINALLY HEARD ON 18/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. THANKAPPAN, J.

CRL. L.P.NO.655 OF 2007

Dated this the 18th day of September, 2007.

O R D E R

This is an application for special leave to appeal against the judgment in S.T.No.1200/2004 on the file of the Judicial Magistrate of First Class, Pattambi. As per the complaint filed by the petitioner/complainant, it was alleged that the 1st respondent owed an amount of Rs.20,000/= to the petitioner/complainant and for the return of that amount, Ext.P1 cheque has been issued. But when the cheque was presented for encashment, it was dishonoured and on complying the provisions regarding notice and on seeing that the amount covered by the cheque has not been paid by the 1st respondent, the complaint has been filed.

2. To prove the above charge, the complainant himself was examined as PW1 and Exts.P1 to P5 were also produced. After closing the evidence adduced on behalf of the petitioner/complainant, the 1st respondent/accused was questioned under Section 313 of the Code. Denying the transactions contained in the complaint, the 1st respondent had stated that the cheque in question was issued by him

as a security when he had bidden the chitty fund which was conducted by the petitioner/complainant and not in discharge of any legally enforcible debt. To prove this case, the 1st respondent also relied on Exts.D1 and D2. The specific case set up by the petitioner/complainant was that the cheque was issued for the discharge of an amount of Rs.20,000/=. But the trial court, after considering the evidence, found that the cheque in question was not issued for discharge of any amount as urged in the complaint, whereas the same was given as a security. Finding the above, the trial court acquitted the 1st respondent. Against which, this petition is filed. Heard the learned counsel appearing for the petitioner and perused the records made available to this Court.

3. The trial court had fully considered the entire evidence adduced before the court and found that the petitioner himself admitted the fact that he was conducting chitty in the name of Dhanasree Finance and in which the 1st respondent was a subscriber. It was also found by the court that the 1st respondent had bidden the chitty and the amount covered by the chitty has been paid on accepting the cheque in question as a security. It was also found by the trial court that the complainant himself had

filed O.S.No.8/2003 to recover the balance amount of the chitty which the 1st respondent had bidden and the suit is still pending. In the above circumstances, the trial court fully justified in finding that the cheque in question is issued without any consideration and hence, the case set up by the petitioner in the complaint was not proved that the 1st respondent had committed an offence punishable under Section 138 of the N.I.Act.

After considering the case of the petitioner as well as the 1st respondent, this court is of the view that the judgment of the trial court is on evidence and it requires no interference by this Court. Accordingly, special leave to appeal stands dismissed.

K. THANKAPPAN, JUDGE.

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